

Tax Parcels: 5130100002, 5040100005, 5130100008, 5040100009A and 5130100009B

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1177 Jamestown Road
Williamsburg, VA 2318

PROFFERS

THESE PROFFERS are made this _ day of _____, 2014 by XANTERRA KINGSMILL, LLC, a Delaware limited liability company (together with its successors in title and assigns, the "Owner").

RECITALS

A. Owner is the owner of the real property located in James City County, Virginia (the "County"), being Tax Parcel No's 5130100002, 5040100005, 5130100008, 5040100009A and 5130100009B, containing approximately 209.4 acres, more or less, and being more particularly described on Schedule A attached hereto (the "Property").

B. The Property is designated Low Density Residential on the County's Comprehensive Plan Land Use Map and is now zoned R-4 and is subject to the approved Master Plan for Kingsmill. Owner has applied to change the Master Plan area designations applicable to the Property. Owner has applied to rezone the Property from R-4 to R-4, Residential Planned Community District, with proffers, for the sole purpose of offering the proffered conditions on the development of the Property set forth below.

C. Owner has submitted to the County a revised master plan entitled "Kingsmill Proposed Master Plan Amendment" prepared by AES Consulting Engineers dated September 3,

2009, last revised November 27, 2013 (the “Master Plan”) for the Property in accordance with the County Zoning Ordinance.

D. Owner desires to offer to the County certain conditions on the development of the Property not generally applicable to land zoned R-4 in the form of the following Proffers.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

CONDITIONS

1. **Natural Resources**. A natural resource inventory of suitable habitats for S1, S2, S3, G1, G2, or G3 resources as defined in the County’s Natural Resources Policy on the Property shall be submitted to the Director of Planning for his/her review and approval prior to land disturbance by Owner. If the inventory confirms that a natural heritage resource exists, a conservation management plan shall be submitted to and approved by the Director of Planning for the affected area. All inventories and conservation management plans shall meet the Virginia Department of Conservation and Recreation’s Division of Natural Resources (“DCR/DNH”) standards for preparing such plans, and shall be conducted under the supervision of a qualified biologist as determined by the DCR/DNH or the United States Fish and Wildlife Service. All approved conservation management plans shall be incorporated into the plan of development for the site, and the clearing, grading or construction activities thereon, to the maximum extent possible. Upon approval by the Director of Planning, a mitigation plan may substitute for the

incorporation of the conservation management plan into the plan of development for the site. This proffer shall be interpreted in accordance with the County's Natural Resources Policy adopted by the County on July 27, 1999. This proffer shall not prohibit or apply to land disturbance by the Hampton Roads Sanitation District in existing easements for sewer facilities.

2. Archaeology. At the request of the Director of Planning, a Phase I Archaeological Study for the portions of the Property not previously studied shall be submitted to the Director of Planning for review and approval prior to land disturbance by Owner. A treatment plan shall be submitted and approved by the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation and/or identified as eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase III study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study areas. All Phase I, Phase II, and Phase III studies shall meet the Virginia Department of Historic Resources' *Guidelines for Preparing Archaeological Resource Management Reports* and the Secretary of the Interior's *Standards and Guidelines for Archaeological Documentation*, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's *Professional Qualification Standards*. All approved treatment plans shall be incorporated into

the plan of development for the Property and the clearing, grading or construction activities thereon. This proffer shall be interpreted in accordance with the County's Archaeological Policy adopted by the County on September 22, 1998. This proffer shall not prohibit or apply to land disturbance by the Hampton Roads Sanitation District in existing easements for sewer facilities.

3. Streetscape Guidelines Policy. Owner shall comply with the County's Streetscape Guidelines Policy adopted by the Board of Supervisors on November 22, 2011 in the development of new residential subdivisions on the Property.

4. Carter's Grove Country Road Trail. Owner shall provide a multi-use trail within the Carter's Grove Country Road corridor from the eastern right of way line of Mounts Bay Road to the eastern boundary of the Property adjacent to Grove Creek. In areas of the Country Road corridor designated on the Master Plan as "Open Space," the trail shall consist of the existing Country Road pavement, repaired or replaced as necessary. In Amendment Areas 5 and 6, the trail shall consist of paved asphalt at least eight feet in width and shall be located generally as shown on the conceptual layouts entitled Kingsmill Area 5 and Kingsmill Areas 6 and 7 Conceptual Layout dated 1/15/13 included in the Master Plan submission, with the exact location to be approved by the Director of Planning. With the prior approval of the Director of Planning, the location of the trail, and in Amendment Area 5, the width of the trail, may vary from the location and width shown on the conceptual layouts based on actual field conditions, including, without limitation, topography, presence of cultural or natural resources or large trees.

The portion of the trail from Mounts Bay Road to Kingsmill Road shall be completed, designated as "Common Area" pursuant to the Declaration of Covenants and Restrictions dated September 18, 1973 and recorded in the Clerk's Office of the Circuit Court for the City of

Williamsburg and County of James City in Deed Book 147 at page 642, as amended and/or supplemented (the “Declaration”), and be conveyed to the Kingsmill Community Services Association (“KCSA”) for use as a recreational amenity as a condition of the County issuing final approval of the final subdivision plat of Amendment Area 6. The portion of the trail from Kingsmill Road to Amendment Area 1 shall be completed, designated as “Common Area” pursuant to the Declaration, and be conveyed to KCSA for use as a recreational amenity as a condition of the County issuing final approval of the final subdivision plat of Amendment Area 1. The portion of the trail from Amendment Area 1 to the Connector Road from Wareham’s Pond Road to the Brewery Services Road shall be completed, designated as “Common Area” pursuant to the Declaration, and be conveyed to KCSA for use as a recreational amenity as a condition of the County issuing building permits for more than 50 residential units in Amendment Area 2. The portion of the trail from the Connector Road to the end of the trail at Grove Creek shall be completed, designated as “Common Area” pursuant to the Declaration, and be conveyed to KCSA for use as a recreational amenity as a condition of the County issuing final approval of the final subdivision plat of Amendment Area 5.

5. Theme Park and Brewery Disclosure and Acknowledgments. (a) Prior to the sale of any lot or residential unit on the Property, Owner shall record a supplementary declaration against the portion of the Property upon which the lot or unit is located containing the following provisions, as the same may be amended with the prior approval of SeaWorld Parks & Entertainment LLC or its successor in title to the Busch Gardens Williamsburg theme park and the County Attorney:

ARTICLE __

THEME PARK ACKNOWLEDGEMENT

Section _.1 Theme Park Operational Conditions. Each Owner and each occupant or any tenant or other party claiming by, through or under such owner of any portion of the land described on Exhibit hereto (the "Restricted Parcels") acknowledges and agrees that Busch Gardens Williamsburg (the "Theme Park"), currently owned by SeaWorld Parks & Entertainment LLC ("Sea World"), is located on the nearby land described on Exhibit hereto (the "Sea World Parcels"), and that the Theme Park (as the same may be operated now or in the future) may have a significant impact upon the Restricted Parcels due to theme park activities, including, without limitation, the transmission, discharge, or emission near, over, or across the Restricted Parcels of noise, smells, artificial lighting, laser beams, lights, and disturbances arising from or related to the existence of crowds, the existence, visibility or operation of rides, animal shows, concerts, events, games, fireworks, laser shows, or related to such other existing and future activities as shall be conducted in connection with theme park use, including any future changes, new rides, expansions and improvements to the Theme Park, or otherwise developed upon the Sea World Parcels (all of the foregoing are referred to herein as the "Theme Park Operational Conditions").

Section _.2 Easement Rights. In recognition of the foregoing, Declarant as the owner of the Restricted Parcels, does hereby grant an irrevocable and perpetual easement over the entirety of the Restricted Parcels in favor of, and for the benefit of, the Sea World Parcels and the owner thereof, for the purpose of permitting such Theme Park Operational Conditions. The foregoing easement may not be amended except in accordance with the terms of this Declaration plus the consent of all of the then existing owner(s) of the Sea World Parcels. The foregoing easement shall burden the Restricted Parcels, run in favor of the Sea World Parcels, and shall be binding upon and inure to the benefit of the respective successors and assigns of the current owners of the Sea World Parcels and the Restricted Parcels. Declarant hereby agrees to provide Sea World a subordination agreement reasonably acceptable to Sea World from all mortgagees, if any, of the Restricted Parcels as of the date hereof confirming the superiority of this easement to the lien of any mortgage or deed of trust encumbering any portion of the Restricted Parcels.

Section _.3 Release and Acknowledgments. Each Owner, by its acceptance of its deed for any real property within the Restricted Parcels, hereby expressly acknowledges and agrees that: (i) Owner has reviewed such maps and plats and conducted such independent investigations as Owner deems necessary to fully understand the location of the Owner's property in relation to the Theme Park; (ii) Owner is fully aware of and accepts such Theme Park Operational Conditions and the easement set forth in Section _.2 above; and (iii) the Theme Park Operational Conditions do not constitute and shall not be deemed a nuisance. Further, each such Owner agrees that neither Declarant, Sea World, nor any owner(s), lessee(s), manager(s), or operator(s) of Sea World, nor any of their respective partners, directors, managers, members, officers, shareholders, employees, agents, successors or assigns (collectively, the "Released Parties") shall be liable to any Owner within the Restricted Parcels, or to any tenant, occupant, or other party claiming by, through or under such Owner within the Restricted Parcels (collectively, the "Restricted Parcel Occupants"), due to or arising, directly or indirectly, from the Theme Park Operational Conditions, and such parties hereby release each of the Released Parties therefrom and Restricted Parcel Occupants shall not be entitled to injunctive relief from the Theme Park Operational Conditions.

(b) Prior to the sale of any lot or residential unit on the Property, Owner shall record a supplementary declaration against the portion of the Property upon which the lot or unit is located containing the following provisions, as the same may be amended with the prior approval of Anheuser Busch, LLC or its successor in title to the Anheuser Busch Williamsburg brewery and the County Attorney:

ARTICLE __

BREWERY ACKNOWLEDGEMENT

Section __.1 Brewery Operational Conditions. Each Owner and each occupant or any tenant or other party claiming by, through or under such owner of any portion of the land described on Exhibit __ hereto (the “Restricted Parcels”) acknowledges and agrees that Anheuser Busch Brewery (the “Brewery”), currently owned by Anheuser Busch, LLC (“Busch”), is located on the nearby land described on Exhibit __ hereto (the “Busch Parcels”), and that the Brewery (as the same may be operated now or in the future) may have a significant impact upon the Restricted Parcels due to Brewery activities, including, without limitation, the transmission, discharge, or emission near, over, or across the Restricted Parcels of noise, smells, lights, and disturbances arising from or related to Brewery operations, including, without limitation, smells emitted in the brewing process and traffic noise, or related to such other existing and future activities as shall be conducted in connection with the Brewery use, including any future changes, expansions and improvements to such Brewery (all of the foregoing are referred to herein as the “Brewery Operational Conditions”).

Section __.2 Easement Rights. In recognition of the foregoing, Declarant as the owner of the Restricted Parcels, does hereby grant an irrevocable and perpetual easement over the entirety of the Restricted Parcels in favor of, and for the benefit of, the Busch Parcel and the owner thereof, for the purpose of permitting such Brewery Operational Conditions. The foregoing easement may not be amended except in accordance with the terms of this Declaration plus the consent of all of the then existing owner(s) of the Busch Parcel. The foregoing easement shall burden the Restricted Parcels, run in favor of the Busch Parcel, and shall be binding upon and inure to the benefit of the respective successors and assigns of the current owners of the Busch Parcel and the Restricted Parcels. Declarant hereby agrees to provide Busch a subordination agreement reasonably acceptable to Busch from all mortgagees, if any, of the Restricted Parcels as of the date hereof confirming the superiority of this easement to the lien of any mortgage or deed of trust encumbering any portion of the Restricted Parcels.

Section __.3 Release and Acknowledgments. Each Owner, by its acceptance of its deed for any real property within the Restricted Parcels, hereby expressly acknowledges and agrees that: (i) Owner has reviewed such maps and plats and conducted such independent investigations as Owner deems necessary to fully understand the location of the Owner’s property in relation to the Brewery; (ii) Owner is fully aware of and accepts such Brewery Operational Conditions and the easement set forth in Section __.2 above; and (iii) the Brewery

Operational Conditions do not constitute and shall not be deemed a nuisance. Further, each such Owner agrees that neither Declarant, Busch, nor any owner(s), lessee(s), manager(s), or operator(s) of Busch, nor any of their respective partners, directors, managers, members, officers, shareholders, employees, agents, successors or assigns (collectively, the “Released Parties”) shall be liable to any Owner within the Restricted Parcels, or to any tenant, occupant, or other party claiming by, through or under such Owner within the Restricted Parcels (collectively, the Restricted Parcel Occupants”), due to or arising, directly or indirectly, from the Brewery Operational Conditions, and such parties hereby release each of the Released Parties therefrom and Restricted Parcel Occupants shall not be entitled to injunctive relief from the Brewery Operational Conditions.

(c) Prior to recordation of each supplementary declaration against the Property, Owner shall provide the County Attorney with a copy of such supplementary declaration containing the provisions required by Paragraphs (a) and (b) above for the County Attorney to review and confirm compliance with this Proffer.

6. Buffers. (a) There shall be a minimum 50 foot buffer along Kingsmill Road and Southall Road as the same front onto Master Plan Amendment Areas 6 and 7 of the Property, which buffer area is generally shown on the Kingsmill Areas 6 and 7 Conceptual Layout included in the Master Plan. The buffers shall be exclusive of any lot. Notwithstanding the establishment of such buffer area, the following improvements will be allowed to exist within the buffer area: the entrance road into Amendment Area 6 and the shared driveway into Amendment Area 7 as generally shown on the Kingsmill Areas 6 and 7 Conceptual Layout included in the Master Plan, landscaping, a trail connection from Southall Road to the Carter’s Grove Country Road trail, utilities, stormwater management facilities, lighting, entrance features and signs.

(b) The existing landscaped berm located adjacent to Wareham’s Pond Road and Amendment Area 2 shall be maintained in any development plan for Amendment Area 2, except where breaks are necessary for entrances to the Area and for utility crossings as approved as part of the development plan review process.

(c) There shall be a vegetated buffer with a minimum width of 75 feet located in Amendment Area 5 in the general location shown on the Master Plan as “3.0 AC. Buffer.”

(d) There will be a buffer between each of the Amendment Areas listed below, with the minimum width specified beside each Amendment Area, and the adjacent tax parcel listed below (each of which is in a different zoning district than the Property) measured from the Property’s boundary line with the listed parcels, such buffers to be designated as “Open Space” on the Master Plan:

<u>Amendment Area</u>	<u>Buffer Width</u>	<u>Adjacent Tax Parcels</u>
1	150 feet	5130100003
2	150 feet	5130100001 and 5140100009
6	50 feet	5020100093 and 5020900018A
7	125 feet	5020100078 and 5130100003

These buffers shall be exclusive of any lot. Notwithstanding the establishment of such buffer areas, the Carter’s Grove Country Road trail will be allowed to exist within the buffer area.

7. RPA Setback. No structure shall be constructed with 15 feet of a Resource Protection Area buffer. No area within an RPA buffer shall be included in a lot of a size of less than one acre.

8. Nutrient Management Plan. The Owner shall be responsible for contacting an agent of the Virginia Cooperative Extension Office (“VCEO”) or, if a VCEO agent is unavailable, a soil scientist licensed in the Commonwealth of Virginia, an agent of the Soil and Water Conservation District or other qualified professional to conduct soil tests and to develop, based upon the results of the soil tests, customized nutrient management plans (the “Plans”) for each of the Amendment Areas The Plans for each Amendment Area shall be submitted to the County’s Environmental Director for his review and

approval prior to the issuance of the building permits for more than 50% of the dwelling units permitted in such Amendment Area. KCSA shall be responsible for ensuring that any nutrients applied to common areas within the Amendment Areas which are controlled by KCSA be applied in accordance with the Plan. The Owner shall provide a copy of the Plan for each Amendment Area to the initial purchaser of each lot located therein.

9. **Stormwater Management.** Owner has been advised by the County that because Kingsmill has an approved Stormwater Management Master Plan, Division Plan No. SWM-01-12 dated June 29, 2012 (the “Stormwater Master Plan”), that stormwater management for the development of the Property will continue to be governed by the Stormwater Master Plan and the ordinances and regulations in effect as of the date of the Stormwater Master Plan. To provide additional environmental protections, the Owner agrees that development of the Property shall be subject to the County’s Special Stormwater Criteria. If the County determines in the future that development of the Property or any part thereof is no longer governed by the Stormwater Master Plan and the ordinances and regulations in effect as of the date of the Stormwater Master Plan and is subject to newly adopted ordinances and regulations then this Proffer shall terminate as of the date of that determination.

WITNESS the following signature.

XANTERRA KINGSMILL, LLC

By:_____

Title:

STATE OF COLORADO

COUNTY OF ARAPAHOE, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 201_,
by _____ as _____ of Xanterra Kingsmill, LLC, a
Delaware limited liability company, on behalf of the company.

NOTARY PUBLIC

My commission expires:_____

Registration No.: _____

Schedule A
Property Description

COUNTRY ROAD EAST PARCEL

A PORTION OF PARCEL NUMBER 5130100002

All that certain parcel or tract of land, with the improvements shown thereon, situate, lying and being in the County of James City, identified as the "Country Road East Parcel" on that certain plat titled "BOUNDARY SURVEY COUNTRY ROAD EAST PARCEL PROPERTY OF BUSCH PROPERTIES, INC. ROBERTS DISTRICT JAMES CITY COUNTY, VIRGINIA" dated June 6, 2013 made by AES Consulting Engineers recorded as Instrument Number 130014475 containing 6,214,614 square feet (142.668 acres), more or less.

COUNTRY ROAD WEST PARCEL

A PORTION OF PARCEL NUMBER 5130100002

All that certain parcel or tract of land, with the improvements shown thereon, situate, lying and being in the County of James City, identified as the "Country Road West Parcel" on that certain plat titled "BOUNDARY SURVEY COUNTRY ROAD WEST PARCEL PROPERTY OF BUSCH PROPERTIES, INC. ROBERTS DISTRICT JAMES CITY COUNTY, VIRGINIA" dated June 6, 2013 made by AES Consulting Engineers recorded as Instrument Number 130014474 containing 2,217,901 square feet (50.916 acres), more or less.

SOUTHALL ROAD PARCEL

PARCEL NUMBER 5040100005

All that certain parcel or tract of land, with the improvements shown thereon, situate, lying and being in the County of James City, identified as the "Southall Road Parcel" on that certain plat titled "BOUNDARY SURVEY SOUTHALL ROAD PARCEL PROPERTY OF BUSCH PROPERTIES, INC. ROBERTS DISTRICT JAMES CITY COUNTY, VIRGINIA" dated June 6, 2013 made by AES Consulting Engineers recorded as Instrument Number 130014476 containing 226,941 square feet (5.210 acres), more or less.

PARCEL ADJACENT TO WAREHAM'S POND ROAD

PARCEL NUMBER 5130100008

All that certain lot, piece or parcel of land, with the improvements shown thereon and thereto belonging, lying and being in the Roberts District, James City County, Virginia, containing 1.1068 acres, more or less, as shown on a plat titled "PLAT OF BOUNDARY LINE EXTINGUISHMENT AND SUBDIVISION BEING PARCEL 5-B1, CARTER'S GROVE COUNTRY ROAD, KINGSMILL ON THE JAMES, PREPARED FOR BUSCH PROPERTIES, INC." prepared by AES Consulting Engineers dated November 4, 2011, and recorded in the Clerk's Office of the Circuit Court of James City County, Virginia, as Instrument No. 120010877.

PARCEL R-9A

PARCEL 5040100009A

That certain parcel of land located in James City County, Virginia, shown and set out as "Parcel R-9A, 72,533 S. F., 1.665 Acres", on the plat entitled "COMPOSITE PLAT OF SUBDIVISION, PARCEL R-9, KINGSMILL ON THE JAMES, PROPERTY OF XANTERRA KINGSMILL, LLC" made by AES Consulting Engineers dated September 3, 2013 and recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City as Instrument No. 130023433.

PARCEL R-9B

PARCEL 5130100009B

That certain parcel of land located in James City County, Virginia shown and set out as "Parcel R-9B, 352,742 S. F., 8.098 Acres" on the plat entitled "COMPOSITE PLAT OF SUBDIVISION, PARCEL R-9, KINGSMILL ON THE JAMES, PROPERTY OF XANTERRA KINGSMILL, LLC" made by AES Consulting Engineers dated September 3, 2013 and recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City as Instrument No. 130023433.